

1
2
3
4
5
6 BEFORE THE WASHINGTON STATE
7 OFFICE OF THE INSURANCE COMMISSIONER
8

9 In the Matter of the Application regarding the
10 Conversion and Acquisition of Control of
Premera Blue Cross and its Affiliates,

No. G02-45

11 DECLARATION OF MARK STROH

12 Washington Citizen Action, Welfare Rights
13 Organizing Coalition, American Lung
14 Association of Washington, Northwest
15 Federation of Community Organizations,
16 Northwest Health Law Advocates, Service
17 Employees International Union Washington
State Council, The Children's Alliance,
Washington Academy of Family Physicians,
Washington Association of Churches,
Washington Protection and Advocacy System
and Washington State NOW,

18 Applicants for Intervention.
19
20

21 I, Mark Stroh, declare:
22
23

- 1 1. I am the Executive Director of the Washington Protection and Advocacy System
2 (“WPAS”). I am over the age of eighteen and am competent to testify about the
3 matters stated herein.
- 4 2. I have been the Executive Director of WPAS for thirteen years and have worked in
5 the protection and advocacy system for twenty-six years in both Michigan and
6 Washington States. In addition, I worked with individuals with disabilities at
7 Developmental Services, Inc. for two years as a media specialist.
- 8 3. WPAS is a non-profit corporation that receives federal funding and has been
9 designated by the Governor as this state’s protection and advocacy agency. Under
10 its federal mandate, WPAS provides individual and class representation to
11 Washington residents with disabilities on a broad range of disability related issues.
12 WPAS also represents itself, under its federal mandate, on various issues of concern
13 to persons with disabilities.
- 14 4. Pursuant to the “Developmental Disabilities Assistance and Bill of Rights Act,” 42
15 U.S.C. § 15041, *et seq.*, the “Protection and Advocacy for Individuals with Mental
16 Illness Act,” 42 U.S.C. § 10801, *et seq.*, the “Protection and Advocacy for Individual
17 Rights Act,” 29 U.S.C. § 794e, 42 U.S.C. § 300d-53 (Protection and Advocacy for
18 Individuals with Traumatic Brain Injuries), and RCW 71A.10.080, WPAS has the
19 authority and duty to protect and advocate for the advancement of the legal and civil
20 rights of individuals throughout Washington who have physical, mental
21 developmental, and traumatic brain injury-related disabilities.

- 1 5. As the duly designated protection and advocacy system for individuals with mental,
2 physical and developmental disabilities in the state of Washington, WPAS has a
3 federally mandated obligation to pursue legal, administrative, and such other
4 appropriate remedies and relief as may be necessary to protect and advocate for the
5 rights of those persons within the state of Washington who are or who may be eligible
6 for treatment, services or habilitation due to their developmental, mental, or physical
7 disabilities. 42 U.S.C. §§15041, *et seq.*; § 10801, *et seq.*; and, 29 U.S.C. §794e.
- 8 6. The Governor of Washington has guaranteed that WPAS will have the ability to meet
9 all of its federal obligations including, but not limited to pursuing any necessary
10 remedies including administrative and legal action on behalf of individuals with
11 disabilities. See Letter from Booth Gardner to Edward Singler, dated June 19, 1991,
12 at 1, a true and accurate copy of which is attached as Ex. 1. As WPAS does not
13 currently own a licensed copy of Adobe Acrobat, a Word-format reproduction of the
14 Exhibit is being provided with the electronic copy of the Applicant-Intervenors'
15 brief, so as to comply with the Commissioner's First Case Management Order § 5.
- 16 7. Under federal law, WPAS is required to and does establish a set of priorities for
17 pursuing advocacy goals to be selected by a multi-member governing board whose
18 members broadly represent or are knowledgeable about the needs of clients served by
19 WPAS, including individuals with disabilities receiving services to address their
20 disabilities and their family members. Pursuant to federal law, these priorities are
21 reviewed on an annual basis, and the public is provided the opportunity to comment
22 on them. Pursuant to federal law, WPAS also has advisory councils that advise the
23

1 agency on these priorities; these councils include attorneys, health care professionals,
2 health care providers, individuals knowledgeable about disabilities, and persons with
3 disabilities who are receiving services for their disabilities. Pursuant to this process,
4 WPAS has established as priorities the need to pursue systemic advocacy in the area
5 of health care access for people with disabilities.

6 8. Under its federal mandate, WPAS supports the advocacy efforts of its constituents in
7 established “priority” areas through many avenues, including litigation,
8 administrative advocacy, and analysis and commentary on legislative and rulemaking
9 changes. WPAS has extensive experience advocating for the rights of persons with
10 disabilities to health care. In addition to its individual advocacy in this area, the
11 following are examples of WPAS’ health care advocacy initiatives:

- 12 a. Medicaid waiver: WPAS has organized its constituents, coordinated
13 advocacy with other disability and consumer organizations, and provided
14 direct commentary to the U.S. Department of Health and Human Services
15 on Washington State’s requests to implement a Medicaid waiver program of
16 unprecedented breadth and imprecision that would have fundamentally
17 changed the nature of Medicaid in Washington State, depriving Medicaid
18 recipients of an entitlement to services, imposing additional financial
19 burdens on low-income individuals, and creating waiting lists for the receipt
20 of Medicaid funded health care. As a result of this advocacy, D.H.H.S.
21 rejected the State’s first application for the waiver.

- 1 b. Medicaid Ombudsprogram: WPAS has contracted with the Statewide
2 Health Insurance Benefits Advisors (SHIBA), a state-run program, to
3 organize and coordinate a coalition of stakeholders to determine how the
4 known local needs of vulnerable citizens for a Medicaid ombudsprogram
5 could be met by program models adopted by other states, and to formulate a
6 proposal for implementing such a program in Washington. Such
7 stakeholders include the AARP, Lifelong AIDS Alliance, Children's
8 Hospital, the Long Term Care Ombudsperson and the Washington Health
9 Foundation.
- 10 c. Mental Health Parity Advocacy: WPAS is a Founding member (1995) and
11 currently active in the Washington Coalition for Insurance Parity, which
12 seeks to end discrimination in insurance coverage for people with
13 psychiatric disabilities. WPAS' Systems Advocacy Team Director chaired
14 this coalition for several years. Through the Coalition, WPAS currently
15 advocates with policy-makers, providers, business groups and consumers to
16 implement changes in private and state employee coverage and the BHP.
- 17 d. Medicare Savings Coalition: Three years ago, WPAS organized the
18 "Medicare Savings Coalition," the mission of which is to serve as an
19 advocacy, training, education, and networking partnership for Washington
20 State organizations representing the interests of seniors and people with
21 disabilities who are medically underserved. The Coalition gathers and
22 disseminates health care access information within a statewide network of
23

1 organizations that are invested in or serve elderly individuals and persons
2 with disabilities. The coalition also identifies emerging issues related to
3 access to and quality of health care for persons with disabilities and elderly
4 individuals, acts as an advisory group to state and federal policymakers, on
5 issues that impact its constituency, and advocates for system changes that
6 improve health care access and services to constituents. WPAS staff
7 continues to serve on the Coalition's Steering Committee.

8 e. Medicaid Fraud: WPAS is currently working with SHIBA and the State
9 Long Term Care Ombudsman to identify the scope of and the seriousness of
10 issues related to Medicaid fraud by providers who serve people with
11 disabilities and people who are elderly.

12 f. Home Care: WPAS advocates with the Washington State Home Care
13 Quality Authority ("HCQA") for increased representation and protections
14 for persons with disabilities who use personal assistance services provided
15 through contract with the HCQA.

16 9. WPAS' federal mandate to protect and advocate on behalf of persons with
17 disabilities, and its extensive experience on health care issues faced by persons with
18 disabilities uniquely situates WPAS to provide the OIC critical analysis of the legal
19 and health policy impact of Premera's proposed conversion on Washington State's
20 citizens with disabilities.

21 10. Based upon information and belief, numerous individuals with disabilities in the state
22 of Washington are Premera enrollees, in significant part through Premera's Medicaid
23

1 managed care contracts and its Medicare supplemental coverage. See Declaration of
2 Janet Varon for a complete discussion of the significant interest Applicant-
3 Intervenors have in Premera's role in the Medicaid Healthy Options program.
4 WPAS, on behalf of its constituents has a significant interest in ensuring that
5 Premera's proposed conversion not limit or impair its disabled enrollees' access to
6 affordable health care providers and coverage.

7 11. Based upon information and belief, many of WPAS' constituents are individuals with
8 disabilities who are low-income, often dependent on fixed incomes due to their
9 disabilities, and lack significant resources to get the health care they need. WPAS, on
10 behalf of its constituents, has a significant interest in ensuring that the impact of
11 Premera's proposed conversion does not impair their ability to obtain health care or
12 coverage from other providers or insurers.

13 12. Based upon information and belief, WPAS' constituents include beneficiaries of the
14 nonprofit assets held by Premera that it proposes to transfer to a foundation or
15 foundations dedicated to health care purposes in Washington and Alaska. WPAS, on
16 behalf of its constituents, has a significant interest in ensuring that any non-profit
17 foundation or foundations created from Premera's assets widely benefits individuals
18 with disabilities' access to affordable health services and health coverage without
19 restrictive limitations that would be contrary to this purpose. As a possible
20 beneficiary of the foundation, WPAS itself also has a significant interest in this.

21 13. If full intervention status is granted, WPAS, together with the other ten consumer and
22 provider organizations that have jointly sought intervention status, plans to obtain a
23

1 study of the health impact of the proposed Premera conversion on Washington state
2 consumers. WPAS anticipates that the health impact study will consider the potential
3 impact of the conversion on access to care in Medicaid, the Basic Health Plan and for
4 disabled health consumers. The health impact study will require discovery regarding
5 Premera's current and future business operations.

6 14. WPAS, through its national network of state protection and advocacy agencies, has
7 access to the experience and expertise developed by similar agencies in other states,
8 as well as support from the National Association of Protection and Advocacy Systems
9 (NAPAS) and the National Health Law Project, which contracts with NAPAS to
10 provide technical assistance and consultation on issues concerning the health care
11 rights of persons with disabilities. The designated Protection and Advocacy agencies
12 in New Mexico and Wisconsin have been permitted to participate in the adjudicative
13 hearings in those states on the proposed conversion of their local Blue Cross and Blue
14 Shield plan, providing their Insurance Commissioner and Superintendent with
15 important information about the impact of the proposed conversions on persons with
16 disabilities.

17 I certify and declare under penalty of perjury under the laws of the State of Washington
18 that the foregoing is true and correct, upon information and belief.

19 DATED this ____ day of November, 2002 in Edmonds, Washington.

20
21 _____
22 Mark Stroh
23